

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

MODIFIED STATEMENT OF REASONS MARCH 2007

TITLE 13, CALIFORNIA CODE OF REGULATIONS
DIVISION 2, CHAPTER 6.5, AMEND ARTICLE 1, SECTION 1201; ARTICLE 3,
SECTIONS 1212, 1212.5, 1213, AND ARTICLE 6, SECTION 1234

MOTOR CARRIER SAFETY - HOURS OF SERVICE (CHP-R-06-04) (Z-06-1212-04)

PURPOSE OF REGULATORY ACTION

California Vehicle Code (VC) Section 2402 authorizes the Commissioner of the California Highway Patrol (CHP) to make and enforce regulations as necessary to carry out the duties of the CHP. Sections 32002, 34501, 34501.2, and 34501.5 VC allow the CHP to adopt reasonable rules and regulations which are designed to promote the safe operation of vehicles described in Section 34500 VC, which are commercial vehicles commonly referred to as “regulated” vehicles (trucks, truck-trailer combinations, buses, etc.). The adopted regulations are contained in Title 13, California Code of Regulations (13 CCR).

This rulemaking action adopts driver hours of service rules which are essentially identical to the newly adopted federal driver hours of service rules listed in Title 49, Code of Federal Regulations (49 CFR), Part 395. By adopting the essentially identical regulations, this rulemaking action will enhance the competitiveness of California by eliminating or modifying, to the extent possible, regulations that represent a negative impact on businesses by conflicting with updated federal regulations. Also, this rulemaking will allow the CHP to comply with the requirements of Section 34501.2 VC, by adopting regulations consistent with regulations adopted by the United States Department of Transportation. Lastly, this rulemaking action will add nonsubstantive changes to regulatory language in order to lend further clarity to existing rules.

SECTION BY SECTION OVERVIEW

Title 13 CCR, Division 2, Chapter 6.5 contains the CHP Motor Carrier Safety Regulations. Article 1, Sections 1200 through 1202.2, contain the Definitions and General Provisions and Article 3, Sections 1212 through 1218 contain the General Driving Requirements.

Article 1. Definitions and General Provisions.

Section 1201. Definitions.

Subsection (n) will be amended to more clearly define an interstate driver as a driver who operates in interstate commerce. The CHP proposes to adopt, by reference, the definition “interstate commerce” as defined in 49 CFR, Section 390.5 in order to meet the mandate and intent of Section 34501.2 VC. Because Section 34501.2 VC mandates the CHP to adopt driver hours of service regulations consistent with federal rules, as they now exist and are hereafter amended, it is equally important that the applicability for those regulations be adopted in the same manner, as the current definition for interstate driver is based largely on archaic definitions and understandings relative to the applicability of the federal driver hours of service regulations.

In general, *interstate* commerce means any trade, traffic, or transportation which involves the crossing of state lines or national boundaries. A driver is considered to be engaged in interstate commerce and federal regulations apply immediately upon transporting a load consisting of any quantity of interstate freight even if the load consists primarily of intrastate freight, or when a driver’s intended route involves crossing state lines or national boundaries, whether the vehicle is loaded or empty. Additionally, drivers operating solely within the state, while engaged in the initial or continuous movement of interstate freight are also considered to be engaged in interstate commerce. For example, general freight loaded in Portland, OR, with a final destination of Los Angeles, CA, as manifested by the shipper, is transported to a terminal in Sacramento, CA. A driver from the Sacramento terminal is dispatched to transport the freight to Los Angeles. Although the second driver operated solely within the state, this driver is considered to be engaged in the continuous movement of interstate freight.

Subsection (o) will be amended to more clearly define an intrastate driver as a driver who operates a vehicle in other than interstate commerce, for the same reasons as indicated in subsection (n).

Consequently, *intrastate* commerce means any trade, traffic, or transportation that originates in transit within the state and which is ultimately bound for a destination within the state, without passing through another state. This would also include a motor carrier or driver who is not subject to federal regulation (not in commerce), however, is regulated by California rules.

The federal regulations are clear in determining the applicability of state or federal driver hours of service regulations is based upon the origin and ultimate destination of the property or passengers being transported. A driver who is usually subject to federal driver hours of service regulations (interstate driver) may operate under California’s intrastate driver hours of service regulations immediately upon transporting a load consisting solely of freight in intrastate commerce, not upon dispatch to transport the load. Additionally, a driver will continue to be considered an intrastate driver and be permitted to operate under state regulations, even after off-loading the vehicle, until engaged in interstate commerce.

Article 3. General Driving Requirements.

Section 1212. Driver Hours of Service.

Subsection (a) will be amended to more clearly indicate the applicability of the driver hours of service rules to include only intrastate motor carriers and drivers, except for those instances where interstate motor carriers and drivers are clearly indicated.

Subsection (b) is the adverse driving condition exception. It is being revised to include new daily on-duty and off-duty driver hours of service limits consistent with the newly adopted federal limits.

The adverse driving condition exception applies only to the driving time limitation of 11 hours for property-carrying vehicles or 10 hours for passenger-carrying vehicles. The adverse driving condition exception cannot be used if the driver has accumulated driving time and on-duty (not driving) time, which would put the driver over their daily duty-hour limit or over the 80 hours in 8-consecutive day limit. In addition, the adverse driving condition exception cannot be used for loading and unloading delays. An absolute prerequisite for claiming the adverse driving condition exception is that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or *should have known* of adverse driving conditions are not eligible for the two hours additional driving time.

Subsection (e) Paragraphs (e)(4), (e)(5), (e)(6), and (e)(7) and are being revised to update the current 100-air mile radius exception in order to reflect recent revisions to the federal rules. When all five of the conditions in paragraph (e) are met, a carrier may maintain time records for the driver.

Subsection (f) is being revised to reflect similar changes to Section 1212.5(a) and (b). Subsections (a) and (b) of Section 1212.5 are being revised in order to address intrastate and interstate drivers separately. For this reason the reference to subsection (b) will be removed in order to reference the hours of service limits as they pertain to intrastate drivers only.

Subsection (g) is being revised to update the off-duty, on-duty, and driving limits of the sleeper berth exception. The CHP proposes to improve the regulatory text for the sleeper berth provision by adopting language which is consistent with the sleeper-berth exception adopted in 49 CFR, Part 395. This change will ensure a clear understanding of the rule, however, will significantly affect the way the CHP now enforces the sleeper berth exception.

These requirements will ensure that drivers using the sleeper berth to obtain the minimum off-duty time have at least one primary sleep period of a sufficient length to provide restorative benefits. The second period will allow a driver to have time for a nap or rest break or provide an opportunity to attend to personal matters. The opportunity to take a nap later in the day is an important benefit, especially since drivers taking advantage of the sleeper berth provision may be

operating on an irregular/rotating schedule, getting out of phase with their natural circadian rhythm.

The calculation of the driver's 12-hour driving limit and consecutive 16-hour on-duty limit will restart once a driver has at least 10 hours of off-duty time, whether it is (1) 10 consecutive hours of sleeper berth time; (2) 10 consecutive hours of off-duty time; or (3) a combination of 10 consecutive hours of sleeper berth and off-duty time. Adoption of this proposal will provide drivers with a fourth option to obtain the equivalent of 10 hours off-duty by combining two separate periods of sleeper berth or off-duty time that total at least 10 hours.

When calculating off-duty time for drivers using sleeper berths under this proposal, only two separate periods may be used and both must add up to at least 10 hours. One period must be at least 8 consecutive hours of sleeper berth time. The second period must be at least 2, but less than 10, consecutive hours of sleeper berth time, off-duty time, or a combination of both.

For drivers using two separate periods of sleeper berth and off-duty time, the calculation of the driver's 12-hour driving limit and consecutive 16-hour on-duty limit will begin from the end of the first period used in the calculation. This will provide a simplified method for calculating a driver's on-duty and driving time and address enforcement concerns which might otherwise be anticipated with the new consecutive 16-hour on-duty limit.

For example, following 10 consecutive hours off-duty, a driver begins driving at 5 a.m. At 10 a.m., the driver takes 2 consecutive hours off-duty (1 hour of off-duty time followed by 1 hour of sleeper berth time). At noon, the driver drives for another 5 hours. At 5 p.m., the driver goes into the sleeper berth for 8 consecutive hours. At 1 a.m. the driver begins driving again. In this example, the calculation of the driver's on-duty and driving time begins at the end of the first off-duty/sleeper-berth period, or noon. Therefore, this driver has 7 hours of driving time available at 1 a.m. At no time will a driver have a combination of more than 12 hours of driving time on either side of a sleeper-berth period or off-duty period that is less than ten hours in length.

Subsection (h) is being revised to reflect similar changes being made to Section 1212.5(a).

Section 1212.5. Maximum Driving and On-Duty Time.

Subsection (a) is being revised to reflect changes made to the federal driver hours of service regulations. This rulemaking action is necessary because Section 34501.2 VC requires the CHP to maintain driver hours of service rules which are consistent with the federal driver hours of service rules listed in 49 CFR, Part 395, including the Tolerance Guidelines permitted by Part 355.

Specifically, a truck driver that does not use a sleeper berth must not drive more than 12-cumulative hours following 10 consecutive hours off duty. Such a driver also must not drive after the end of the 16th hour after coming on duty following 10-consecutive hours off duty. This means that once the driver begins a tour of duty, the driver's driving duties must end within 16-consecutive hours. The current 15-hour rule allows drivers to extend the work day by taking off-

duty time, including meal stops and other rest breaks, of less than 8 hours duration other than sleeper berth time. This rule requires that taking off-duty time, including meal stops and other rest breaks, of less than 10-hours duration, other than sleeper berth time, will not extend the work day.

Also, in order to draw a clear distinction between the rules for interstate and intrastate drivers, the CHP is proposing to address the rules separately. Therefore, subsection (a) will only refer to intrastate drivers and motor carriers and subsection (b) will only refer to interstate drivers and motor carriers.

Subsection (b) is being revised to adopt, by reference, 49 CFR, Part 395, for interstate motor carriers and drivers. This will provide interstate drivers and motor carriers with seamless uniformity between state and federal transportation regulations, thereby, permitting interstate motor carriers to operate under one set of rules.

Section 1213. Driver's Record of Duty Status.

Subsection (a) will be amended to include language currently included in subsection (j). This amendment will simply move language already contained elsewhere in the regulations to a more appropriate location in subsection (a). In short, an interstate driver completing a record of duty status, in compliance with 49 CFR, Sections 395.8 or 395.15, is also considered to be in compliance with state regulations.

Subsection (f) currently indicates that failure to maintain a driver's record of duty status or to falsify entries in that same record leaves a driver and/or motor carrier liable to prosecution. The CHP proposes to amend this subsection to prohibit a driver from falsifying a driver's record of duty status and prohibit a motor carrier from allowing a driver to do so. While the subsection currently states that it is punishable to falsify a driver's record of duty status, it is imperative to both law enforcement and industry to have this subsection clearly state that it is unlawful to falsify a driver's record of duty status.

Subsection (j) as already stated, the CHP proposes to move language currently included in subsection (j) to subsection (a) with no substantive effect.

Article 6. Carrier Requirements.

Section 1234. Required Records for Motor Carriers.

Subsection (a) will be amended to reflect the correct subsection reference for the definition of "supporting documents" listed in Section 1201. Subsection "w" will be deleted and "y" added.

Additionally, Section 545 VC (school bus definition) will be added to the references at the end of the section. This reference was inadvertently omitted from previous amendments.

WRITTEN COMMENT PERIOD

The CHP received four written responses to the December 22, 2006, Notice of Proposed Regulatory Action. Summaries of the four written comments, discussions and responses follow. To provide a clear overview of those comments received, each comment will be addressed separately.

Written Comment:

Mr. Eric Saur

**Vice President Policy Development
California Trucking Association**

Issue:

“The concerns that CTA have identified in the proposed regulatory action focus around the adoption of the new sleeper berth rule. The ‘Sleeper Berth Exception’ is currently being challenged in the United States Court of Appeals *NOS. 06-1035, 06-1078*. Public Citizen has also filed a separate petition with the United States Court of Appeals *NOS. 06-10*, for review of the Federal Motor Carrier Safety Administration’s ‘Hours of Service of Driver’s’ final rules. CTA feels it is premature to support the regulatory action while the Sleeper Berth Exception and the complete HOS rule change are in litigation. Adopting the HOS regulatory action could create confusion and uncertainty for the trucking industry. Should the petitioners of both lawsuits prevail, it could cause another rewrite of the HOS and cause the CHP to reissue another regulatory action for industry to comply with. Until both lawsuits are settled CTA opposes any adoption of the Federal Hours Service rules.”

CHP Response:

The CHP acknowledges the above comment by the California Trucking Association (CTA), as well as the following comments from CTA, and has incorporated a copy into the public record. Response to each issue is provided separately.

The CHP is aware of the legal challenges surrounding the sleeper berth exception, adopted as a result of the August 25, 2005 Final Rule (Docket No. FMCSA-2004-19608). However, it is of equal importance to realize both of these challenges are ongoing and have not resulted in the sleeper berth exception being “vacated” or enforcement of the regulations restricted in any way. The FMCSA’s first attempt to adopt hours-of-service regulations was published on April 28, 2003, and vacated by the U.S. Court of Appeals for the District of Columbia Circuit on July 16, 2004. In that instance, the CHP refrained from proposing an adoption of rules that were certain to be rewritten. However, in this instance, the current rules are in effect and viable for interstate motor carriers.

With this said, Section 34501.2 VC, mandates the CHP “establish hours-of-service regulations for drivers of those vehicles that are consistent with the hours-of-service regulations adopted by the United States Department of Transportation in Part 395 of Title 49 of the Code of Federal Regulations.” Adoption of the current regulations is in harmony with that mandate. This is not to say, if the federal rules are amended as a result of a future judicial decision the CHP will not revisit the Drivers’ Hours of Service regulations at that time. However, interstate motor carriers and interstate drivers are already subject to the federal rules (including the provisions of the sleeper berth exception) and the CHP’s rulemaking action will eliminate state regulations that

conflict with updated federal regulations in 49 CFR, thereby allowing California businesses to compete with out-of-state businesses under consistent safety rules. This will eliminate the possibility of California businesses being required to follow state rules which reflect out-of-date federal regulations for their intrastate operations, only to switch to current federal regulations when operating in interstate commerce.

Issue:

“CTA would like to request clarification from the CHP on the following question: ‘would the eight hour sleeper berth rule have an effect with the current agricultural hauling exemptions and if so, how would it be enforced?’”

CHP Response:

Yes, the “eight-hour sleeper berth rule” will have an effect on the “current agricultural hauling exemption, however, it is important to understand the two exemptions were not designed to be used together. The provisions of Section 1212(k) are legislatively mandated by Section 34501.2 VC. These provisions are intended to assist California’s agricultural industry with moving certain agricultural commodities from the field to the first point of processing.

Section 1212(k) states in part “a driver when transporting farm products from the field to the first point of processing or packing, shall not drive for any period after having been on duty 16 hours or more following eight-consecutive hours off duty and shall not drive for any period after having been on duty for 112 hours in any consecutive eight-day period.”

These provisions will conflict with the sleeper-berth exemption in that, first, the driver may not drive after the 16th hour after coming on duty in order to comply with the proposed sleeper-berth exemption. The current agricultural exemption continues to permit a driver to drive up to the 16th hour on duty (not necessarily consecutive). However, a driver who drives after the 16th consecutive hour on duty will no longer be eligible for the sleeper-berth exemption, but may continue to use the agricultural exemption.

Secondly, the sleeper-berth exemption states a driver may not drive more than 12 hours following a ten-hour off-duty period. By contrast, the agricultural exemption requires a driver take eight-consecutive hours off duty before beginning a 16-hour on-duty period. While it is not necessarily impossible to use the two exemptions simultaneously, it is more than likely impracticable. The benefits of the of the agricultural exemption are 16-nonconsecutive hours on duty, only eight-consecutive hours off duty between on-duty periods, and a 112-hour on-duty limit in an eight-day period.

Lastly, combining the two exemptions would make the use of the agricultural exemption’s eight-hour off-duty period impracticable as the eight-hour sleeper-berth period would need to be followed by a second period (off-duty or in the sleeper berth) of at least two hours, but less than ten (unless a 10-consecutive hour sleeper-berth period is used). This second sleeper-berth period would need to be used prior to the end of the 16th consecutive hour on duty in order to use the sleeper-berth exemption. Also, any driving after the 16th hour after coming on duty would disqualify a driver from using the proposed sleeper-berth exemption. The 112-hour limit will remain unaffected.

Enforcement of these rules will remain unchanged. It is important to understand the agricultural exemption and the sleeper-berth exemption are just that, “exemptions.” In the event either exemption is not followed completely, the driver must revert back to the general rule. A driver or motor carrier who does not follow the exemption completely will *not* be found in violation of the exemption, but rather the actual rule they violated.

Mr. Lee Brown
Executive Director
California Dump Truck Owners Association

Issue:

“We applaud the California Highway Patrol for undertaking the process of amending the Motor Carrier Safety Regulations contained in Title 13, California Code of Regulations (13 CCR) to make them more consistent with Federal law. Safe, sensible, and enforceable regulations are vital to the safety of California motorists and ensure the smooth flow of goods both within California and from California to the rest of the nation. The CDTOA has always supported all efforts to maintain and enhance transportation safety by its owners, drivers and equipment.”

CHP Response:

The CHP acknowledges the above comment by the California Dump Truck Owners Association (CDTOA), as well as the following comments from CDTOA, and has incorporated a copy into the public record. Response to each issue is provided separately.

Issue:

“Our concern is with the one aspect of the proposed state regulations where the new state regulations will not be consistent with Federal law. We are referring to the state proposal to require 34 hours off duty rather than the Federal standard of 24 hours to reset the consecutive day clock with respect to drivers involved in transporting construction materials and equipment.

CDTOA hereby requests that the proposed State Title 13 regulations be amended to adopt the Federal exemption providing for a 24 hour rest period for those involved in the transportation of construction materials and equipment.”

CHP Response:

The Construction Materials exemption applies to drivers used primarily in the transportation of construction materials and equipment, which is defined as “the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles.” The driver must be en-route to or from an “active construction site,” which must be at a stage between initial mobilization of equipment and materials to the site, and final completion of the construction project. The construction site must also be within a 50 air-mile radius of the driver's normal work reporting location, and this exemption does not apply to the transportation of hazardous materials in a quantity requiring placarding. This exemption allows these

construction drivers to restart the calculation of an eight-day period under the hours-of-service regulations as follows:

This exemption permits these drivers to “restart the clock,” which means that at any point at which the driver is off-duty for 24 or more consecutive hours, the period of eight days ends at the beginning of that off-duty period, and the clock restarts for purposes of computing the eight day period when the driver goes on duty again. Thus, this exemption enables the motor carrier to designate the time of day at which the period of eight days begins. The definition of “eight consecutive days” in Section 1201 authorizes the carrier to designate the time of day at which the 24-hour period begins, which may vary between the various terminals from which drivers are dispatched.

The CHP does not believe granting this exception would have a negative impact on public safety. While the federal rule does contain a 34-hour restart period applicable to all truck drivers, as CDTOA clearly pointed out, the existing federal regulations also contain an identical exception for drivers of vehicle transporting construction materials. It is important to note, this exception is not “carte blanc;” it does contain adequate safeguards to ensure those drivers which take advantage of the exception are in a position to receive adequate rest by remaining local to their work location; it ensures drivers receive adequate off-duty time between on-duty periods; and as recognized by two of the five sleep studies listed in the recent federal final rule (Docket No. FMCSA–2004–19608), it offers the opportunity to provide the necessary restorative sleep sufficient to permit recovery back to baseline.

For these reasons, the CHP proposes to include the Construction Materials exemption in this rulemaking. This will go one step further in enhancing the competitiveness of California by modifying regulations that represent a negative impact on businesses by conflicting with federal regulations. Also, this rulemaking will allow the CHP to comply with the requirements of Section 34501.2 VC, by adopting regulations consistent with regulations adopted by the United States Department of Transportation without compromising public safety.

Mr. Shane Gusman

Legislative Representative

California Teamsters Public Affairs Council

“I am writing to oppose the above proposed regulations on behalf of the Teamsters because, if adopted they would undermine highway safety. Moreover the proposed regulations go beyond what is required for federal conformance. Additionally, even if opinions differ on the scope of the regulations, the proposal should nonetheless be delayed given certain circumstances which will be discussed below.”

CHP Response:

The CHP acknowledges the above comment by the California Teamsters Public Affairs Council (Teamsters), as well as the following comments, and has incorporated a copy into the public record. Response to each issue is provided separately.

Issue: The proposal jeopardizes public safety.

“Fatigue is a significant factor if not the number one factor in accidents involving commercial motor vehicles. Yet as outlined below the proposed regulations would allow commercial drivers to be on duty and behind the wheel for more hours. This seems at odds with the core mission of the Highway Patrol, to protect the public.

The federal rule that this proposal seeks to conform to dramatically increases both the number of hours that truckers may drive without a break and the number of hours truckers may drive per week. Before the new rule, truckers were permitted to drive no more than 10 consecutive hours before taking a break. Now, truckers can drive for 11 hours straight.

The 34-hour restart—a provision that resets a driver’s clock after a 34-hour rest period—also means more time on the road. In a seven-day period, this puts drivers behind the wheel 14 hours longer with considerably less rest than the old rules. Prior to the new rule, drivers were barred from driving after they had worked 60 hours in the previous seven days or 70 hours in the previous eight, depending on the company schedule. Under the new rule, truckers can now drive 77 hours in seven days or 88 hours in eight days—a more than 25 percent increase.

On-duty hours during which truckers may drive has also climbed, so that a driver working 14-hour shifts under the new rules can now work as many as 84 hours in seven days or 98 hours in eight days—a 40 percent increase over the old limit.

In addition, the new sleeper berth provision requires an eight-hour rest period, forcing a team driver to ‘rest’ for eight hours in a moving truck, with engine noise, vibration, and other distractions around them. If the desired goal was to reduce fatigue, this simply doesn’t work.”

CHP Response:

The Teamsters have addressed a number of significant issues with regard to the proposed regulatory action. In order to provide clarity to the response, the CHP will address those responses in the order the issue was presented.

The 14-hour on-duty limit for interstate drivers (16 on-duty limit proposed for intrastate) and the 10-hour off-duty requirement of today's rule is intended to move most drivers closer to a 24-hour cycle, which allows the body to operate in accord with its normal circadian rhythm and the driver to sleep on the same schedule each day. A driver may remain on duty after the 14-hour window closes or go off duty after the 11th hour of driving (12 hours of driving proposed for intrastate drivers), in each case returning to work after 10 hours off duty, slightly modifying the 24-hour cycle. Nonetheless, most drivers, most of the time, will go off duty at or before the end of the 14th hour, since their principal responsibility, driving, is illegal after that point. Based on

findings by the FMCSA, the CHP believes these minimal modifications of the 24-hour cycle will be offset by the requirement for 10 consecutive hours off duty. This is enough time to enable drivers to get the 7-8 hours of sleep most people need to maintain alertness and prevent the onset of cumulative fatigue.

In light of the fact the CHP proposes to adopt federal rules outright for interstate drivers and consistent rules, which may vary to the extent permitted by 49 CFR, Section 350.341, for intrastate drivers, the same arguments used by FMCSA would also prove to support the CHP's rulemaking action. FMCSA examined a wide range of scientific evidence, independently collected, summarized, and reviewed by a health panel created at the Agency's request by the Transportation Research Board of the National Academies of Science. The FMCSA concluded that the operation of CMVs under their current rule does not have a deleterious effect on the physical condition of drivers. However, because relatively little of the available evidence was derived from motor carrier operations, the Agency had to evaluate and weigh information from different fields and adapt it to a trucking environment. The FMCSA does however believe their conclusions accurately reflect a preponderance of the scientific data. The available information led the FMCSA to conclude the additional off-duty time provided by the federal rule, along with the 14-hour on-duty limit, should have a particularly beneficial effect on drivers' sleep opportunities, and indirectly on their health as well. In fact, preliminary information on sleep habits under that rule shows drivers are getting, on average, at least an additional hour of sleep compared to the pre-2003 federal rule. Additionally, there is no indication that drivers are averaging more hours of work, as opponents of the current rule have feared.

With regard to the 34-hour restart provision, the original restart provisions were the 60-, 70-hour limits for interstate drivers and 80-hour limit for intrastate drivers. Drivers could not drive after having been on duty for those periods until they had been off duty long enough to reduce their seven- or eight-day on-duty totals below the prescribed threshold. These limits are being adopted in the CHP's proposed rulemaking, but the CHP is also adding a second and more flexible recovery provision, as did the FMCSA; the 34-hour restart. A 34-hour period gives a large majority of drivers the opportunity for two night sleep periods, and all drivers the opportunity for two consecutive eight-hour sleep periods separated by a full 18-hour day off duty. Comments to the federal docket supported this concept by stating that the 34-hour restart provides far more flexibility than the 60- and 70-hour limits alone, enabling drivers to tailor their schedules to their business requirements while still spending more time at home.

Alertness Solutions, a scientific consulting firm, provided the FMCSA with a lengthy commentary on the 2003 rule. It stated that the 34-hour period provides sufficient time for two eight-hour sleep periods and one 18-hour period of intervening wakefulness that should allow recovery from a cumulative sleep debt. The daily ten-hour off-duty period is intended to minimize or eliminate any acute sleep loss, so any cumulative sleep debt that might exist under the HOS rule should be minimal or none. Any sleep debt that might occur, should be sufficiently "zeroed" in the context of the 34-hour restart period. Alertness Solutions also argued that there is no scientific data that specifically addresses the number of work hours per week (or per month or per year) that would be required to cause fatigue serious enough to reduce performance, alertness, or safety.

Using the most conservative estimates of crash risk for a given amount of driving time, FMCSA's analysis shows that the safety differential between a 10-hour and an 11-hour driving limit is very small while the economic cost differential is very large. The operational and scheduling flexibility of an 11-hour limit, even when it is not utilized fully, is both economically and socially valuable. According to the drivers who commented to the docket, the 11-hour limit in the 2003 rule enables them to get home more often, when the 10-hour limit would leave them stranded at roadside locations, out of hours. It also allows them to get home without pushing quite as hard as they might be tempted to do under a 10-hour limit.

As for the 12-hour limit proposed for intrastate drivers, it is arguable most intrastate drivers return home every day and are afforded a full eight-hour sleep period in familiar surroundings. This has always been argued to be a significant factor in obtaining adequate rest and minimizing the effects of cumulative fatigue.

Comparing study findings before and after the 2003 federal rule change suggests that drivers are getting more than an hour of additional sleep per night than they previously were able to obtain. While the CHP would like to see drivers obtain a sleep period between seven and eight hours per day to maximize driver alertness, the finding of 6.28 hours of sleep per night is within normal ranges consistent with a healthy lifestyle and is a vast improvement over previous sleep findings. Based on the research that led to the 2003 federal rule, FMCSA knew that short sleep (less than 6 hours) among drivers was a concern from both a safety and health standpoint. As a result, FMCSA increased off-duty time to ten-consecutive hours thereby increasing driver sleep by up to an additional two hours per day. The CHP also proposes adopts the requirement for the ten-consecutive hours of off-duty time.

In addressing the concern with team drivers, the CHP refers to several studies listed in the federal rulemaking docket which suggest that a single 24-hour period is sufficient time for a driver to recover from any cumulative fatigue. Research (Alluisi, E.A. [1972], p. 199) involved subjects who worked eight hours a day for three days, followed by a four-hour on/4-hour off schedule (similar to driving with a sleeper berth) over a two-day period. The study found that the average performance of drivers dropped to 67 percent of baseline toward the end of this period. However, a 24-hour rest period was sufficient to permit recovery back to baseline. A driving simulator study examined daytime driving of 14 hours on/10 hours off over a 15-day period (O'Neill, T.R., et al. [1999], p. 36). These authors also found that 24-hours off was an adequate amount of time for recovery. A third study (Feyer, A.M., et al. [1997], p. 541) found a dramatic recovery with respect to fatigue in team drivers who stopped overnight in the middle of a four- to five-day trip. Thus, with less than 24 hours off, a single night of sleep was very helpful for recovery. A fourth study (Balkin, T., et al. [2000], p. 1-2) found that whether or not 24 hours was sufficient off-duty time, depended on the sensitivity of the performance measure used to assess recovery. Subjects who carried out performance tasks during the day and were restricted to three, five, or seven hours in bed at night were fully recovered after 1 day of recovery sleep of 8 hours in bed. Based on the information provided by these studies, the CHP is confident, the proposed ten-hour rest period is adequate to prevent fatigue and the proposed 34-hour restart does not pose a risk to public safety.

As for the matters of “moving truck, with engine noise, vibration, and other distractions,” the federal studies that tested vibration in CMVs found that truck vibration was close to the ISO health risk threshold, but it did not consistently exceed the threshold. The introduction of new trucks, which reduce the driver’s exposure to vibration, would be expected to mitigate any potential effects of vibration.

The American Trucking Association (ATA) submitted comments to the federal docket indicating modern truck cabs are much quieter, are well ventilated, and have well designed, efficient heating and air conditioning units. Physical stress on drivers, including road vibration, is reduced by power steering. Many trucks are also equipped with automatic transmissions, further reducing stress. Improved suspension gives the driver a better ride, and provides better handling. ATA maintained that the comfort and safety improvements in truck tractors improve the driver’s conditions, leading to a reduction in stress and fatigue. Two other commentators to the federal rule also stated that modern trucks have greatly reduced noise and vibration.

These claims are further supported in that much of the research on whole body vibration within a CMV and its effects on lower back pain or musculoskeletal disorders were based on subjective measures and only weak associations have been found. Given all the other factors that have been shown to be associated with these conditions (age, postures, lifting, smoking, falls, job satisfaction, and body condition, including weight) it is highly unlikely that vibration is the cause for driver fatigue or other physical disorders. The few studies of more objective measures of vibration have also not shown vibration to be, on average, above the health risk level. When comparing the 2003 federal rule to today’s federal rule, it was the FMCSA’s best judgment that, based on the studies reviewed and comments received, vibration does not pose a significant health risk to CMV drivers. For the reasons listed above, the CHP echoes this opinion.

Issue: Intrastate rules need not be changed.

“The proposed regulatory package would not only change California’s rules pertaining to interstate drivers but would change the rules that apply to intrastate drivers as well. Nothing in the federal rule requires California to change its intrastate rules. In fact, the final rule makes it clear that states may continue to have their own rules for this group of drivers.

Again, if fatigue is a danger on the highway it makes no sense for the Highway Patrol to adopt a rule that will increase fatigue by increasing the hours of service for intrastate drivers.

CHP Response: The CHP does agree with the Teamster’s statement that the proposed rules will affect both interstate and intrastate drivers. However, the CHP would respectfully disagree with the commentor’s statement “Nothing in the federal rule requires California to change its intrastate rules.” While the FMCSA did recognize it would take some states longer to adopt the new rules, due to the need for legislative action, the final rule did not relieve the states of their obligation to maintain rules consistent with the federal rules. The FMCSA specifically addressed this matter in the Final Rule (Section J.12) as follows:

“FMCSA recognizes that neither enforcement agencies nor the motor carrier industry will be able to implement the new regulations immediately upon the notice effective date [October 1,

2005]. Some States require legislative action to conform their HOS statutes to this rule, though others adopt FMCSA's safety regulations by reference. All States, however, will have to revise their enforcement manuals, re-program their computers, and retrain roadside enforcement personnel. Motor carriers face a similar challenge to revise their internal compliance procedures and re-train large numbers of drivers, dispatchers, and other staff. Therefore, prior to the effective date of today's final rule, the Agency will issue a policy statement announcing its expectations for compliance and enforcement during the first several months after it takes effect.”

While this policy statement was not released, 49 CFR, Part 355, Appendix A, indicates a state will normally have up to 3 years from the effective date of the new federal requirement to adopt and enforce compatible requirements, relative to interstate motor carriers. Additionally, with respect to both inter- and intrastate motor carriers, Section 34501.2 VC mandates the CHP “adopt rules for vehicles engaged in interstate or intrastate commerce which establish hours-of-service regulations for drivers of those vehicles that are consistent with the hours-of-service regulations adopted by the United States Department of Transportation in Part 395 of Title 49 of the Code of Federal Regulations, as those regulations now exist or are hereafter amended.” Therefore, regardless of the federal requirement, the California legislature has found it necessary for the CHP to adopt regulations which are consistent with the current federal rules.

Issue: The regulatory package should be delayed.

“Even if policymakers are convinced that California must adopt these regulatory changes at some point, it would be prudent to wait until the dust settles on the final federal rule before moving forward with conformance.”

CHP Response: As already stated in our comments to the CTA, the CHP is aware of the legal challenges surrounding the sleeper berth exception, however, it is equally important to recognize interstate motor carriers and interstate drivers are already subject to the federal rules and the CHP’s rulemaking action will eliminate state regulations that conflict with updated federal regulations in 49 CFR, thereby allowing California businesses to compete with out-of-state businesses under consistent safety rules. The benefits incurred through the adoption of rules consistent with federal rules are believed to far out-way any inconvenience resulting from a need to someday amend state regulations relating to a single aspect (sleeper-berth exception) of the overall rule.

Mr. Kenneth Sanders
General Manager
All West Coachlines

The CHP acknowledges the above comment by Mr. Sanders and has incorporated a copy into the public record.

Issue:

“The recent changes in HOS in 49 CFR affected truck drivers, but not drivers of passenger vehicles (bus drivers). Am I correct that Calif. would follow the federal rules and that bus drivers would not be affected?”

CHP Response: Mr. Sanders is accurate in his understanding of the applicability of the proposed hours-of-service limits. In order to remain consistent with federal regulations, only the trucking industry will be substantially affected by this proposal.

CHP Analysis:

In addition to the comments received from the motor carrier industry, the CHP has identified the need to further clarify the requirement for a driver to make the driver records required by Section 1213 available immediately upon request by any authorized employee of the department, or any regularly employed and salaried police officer or deputy sheriff. This language is added to provide greater consistency with the requirements of 49 CFR, Section 395.8(l) and to better clarify the driver’s requirement to present the drivers’ record of duty status upon request.

STUDIES/RELATED FACTS

None.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

IMPACT ON BUSINESSES

The CHP has not identified any significant adverse impact on businesses since these changes either maintain reasonable exceptions for carriers not directly subject to federal jurisdiction (to minimize the impact on business) or they simply adopt federal regulations, as they now exist and are hereafter amended, that already apply to the majority of the regulated community, thereby eliminating a conflict between state and federal regulations.

ALTERNATIVES

The CHP has not identified any alternative, including the no action alternative that would be more effective and less burdensome for the purpose for which this action is proposed. Additionally, the CHP has not identified any alternative which would be as effective and less burdensome to affected persons other than the action being proposed.

Alternatives Identified and Reviewed

1. Amend the existing regulations for consistency with the federal regulations.

2. Make no changes to the existing regulations. This could result in federal preemption of California's Driver Hours of Service Regulations. If preempted, the state could not enforce any of these regulations as they apply to transportation in commerce, thus jeopardizing public safety and environmental protection. Failure to maintain consistency with the Federal Motor Carrier Safety Regulations would also jeopardize federal Motor Carrier Safety Assistance Program grants used for commercial vehicle enforcement and training. The loss of all or a portion of this funding would in itself represent a negative impact on public safety.

ECONOMIC IMPACT

The CHP has determined these regulatory amendments will result in:

- No increased costs for motor carriers directly subject to federal jurisdiction as previously discussed. This rulemaking action will simply allow the state to enforce federal regulations that already apply, but are enforced currently only by federal inspectors who in some cases apply more severe federal penalties.
- No significant compliance cost for persons or businesses directly affected.
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public.
- No impact on the level of employment in the state.
- No adverse impact on the competitiveness of this state to retain businesses, as the majority of other states (especially neighboring) have already adopted these or similar requirements.